Supreme Court, U.S.
FILED
01-1314 MAR 1 2002
OFFICE OF THE CLERK

No. _____

In The

Supreme Court of the United States

ENEDELIA VAIZ and ESMERALDA VAIZ TREJO,

Petitioners,

vs.

SOUTHERN MULTIFOODS, INC.,
SOUTHERN MULTIFOODS, INC. d/b/a TACO BELL,

Respondent.

On Petition For Writ Of Certiorari To The Texas Supreme Court

PETITION FOR WRIT OF CERTIORARI

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34pp

QUESTIONS PRESENTED FOR REVIEW

In the underlying lawsuit, Petitioners filed employment based claims in state court pursuant to state anti-discrimination statutes and also raised causes of action based upon Texas common law. The Respondent stayed the lawsuit in state court and compelled arbitration of these claims pursuant to its Alternative Dispute Resolution Program and application of the Federal Arbitration Act.

Question No. 1: Whether the Federal Arbitration Act can compel the arbitration of state law claims in state court.

Question No. 2: Whether *Southland Corp. v. Keating,* 465 U.S. 1, 79 L.Ed.2d 1270, 104 S.Ct. 852 (1984), should be overruled.

PARTIES TO THE PROCEEDING

Petitioners/Plaintiffs/Relators

Enedelia Vaiz
Esmeralda Vaiz Trejo

Respondent/Defendant/Real Party in Interest

Southern Multifoods, Inc.
Southern Multifoods, Inc. d/b/a Taco Bell

There is no parent or publicly held company owning 10% or more of the corporation's stock

Counsel:
For Respondent/Defendant/Real Party in Interest:

Trial and Appellate:	John Smith/L. Nelson Hall Dunn & Weathered 611 South Upper Broadway Corpus Christi, Texas 78401
Appellate:	Frank Weathered Dunn & Weathered, P.C. 611 South Upper Broadway Corpus Christi, Texas 78401

Respondent (Trial Court from Which Plaintiff's Sought Mandamus Relief)
The Honorable Judge Robert Vargas
County Court at Law Number One
Nueces County Courthouse
901 Leopard
Corpus Christi, Texas 78401

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Lower Court Opinions Have Not Been Published

JURISDICTION

The Texas Supreme Court denied Petitioner's Petition for Writ of Mandamus on December 13, 2001. A copy of this decision appears at Appendix C.

The jurisdiction of this Court is invoked under 28 U.S.C. Sec. 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The issues presented relate to the validity and application of the Federal Arbitration Act, 9 U.S.C. Sec. 1, et seq., to state law claims in state courts.

Section 3 of the Federal Arbitration Act provides that "(If) any suit or proceeding be brought in any of the courts of the United States upon any issue referable to arbitration under an agreement in writing for such arbitration, the court in which such suit is pending, upon being satisfied that the issue involved in such suit or proceeding is referable to arbitration under such an agreement, shall on application of one of the parties stay the trial of the action until such arbitration has been had in accordance with the terms of the agreement, providing the applicant for the stay is not in default in proceeding with such arbitration."

Petitioners assert that the Federal Arbitration Act is not binding on state courts and cannot compel arbitration of suits in state courts involving claims based upon state law.

STATEMENT OF THE CASE

As relates to the underlying lawsuit, Petitioners were employed by the Respondent, Southern Multifoods, Inc., at one of its Taco Bell locations. While employed, the Petitioners were subjected to sexual harassment. As a result, the Petitioners filed suit in County Court at Law Number 1, Nueces County, Texas, in Cause No. 01-61182-1, against Respondent alleging causes of action for violations of the Texas Commission on Human Rights Act (Texas Labor Code Sec. 21, et seq.) and common law negligence (negligent retention, supervision and failure to control).

The Texas Commission on Human Rights Act, Texas Labor Code Sec. 21, et seq., is the statute enacted by the Texas Legislature to set forth the state's employment discrimination policies and laws. Specifically, Sec. 21.051 states:

> "(A)n employer commits an unlawful employment practice if because of race, color, disability, religion, sex, national origin, or age the employer:
>
> > (1) fails or refuses to hire an individual, discharges an individual, or discriminates in any other manner against an individual in connection with compensation or the terms, conditions, or privileges of employment; or

> (2) limits, segregates, or classifies an employee or applicant for employment in a manner that would deprive or tend to deprive an individual of any employment opportunity or adversely affect in any other manner the status of an employee."

Thereafter, Respondent filed a 'Motion to Abate' the trial court proceedings and compel arbitration. Respondent's motion was based upon the enforcement and application of the Federal Arbitration Act and 'Southern Multifoods, Inc. Alternative Dispute Resolution Program' which is attached as Appendix D. The Federal Arbitration Clause was used as the basis to stay the trial court's proceedings and to compel arbitration.

Petitioners raised the federal questions asserted in this Petition for Writ of Certiorari at pages 4 and 5, issues 1, 3 and 9, in Plaintiff's Supplemental Response to Defendant's Amended Motion to Abate wherein they asserted that the Federal Arbitration Act is not binding to suits in state courts and that *Southland Corp. v. Keating* be overruled. (Appendix E).

On June 20, 2001, the trial court signed an Order wherein the Petitioners' lawsuit was abated and ordered to arbitration. (Appendix B). Petitioners filed a petition for writ of mandamus to the Thirteenth Court of Appeals, in Cause No. 10-01-000495-CV, requesting that the trial court's order be vacated and their lawsuit be remanded back to the trial court. Petitioners' issue no. 3 in their Petition for Writ of Mandamus was 'Whether it was an abuse of discretion to compel arbitration pursuant to the Federal Arbitration Act and whether the FAA can compel

arbitration of state law claims in a state court.' (Appendix F).

On September 13, 2001, the Thirteenth Court of Appeals denied Petitioner's petition for writ of mandamus. (Appendix A). Petitioners then filed a petition for writ of mandamus to the Texas Supreme Court in Cause No. 01-1079. The issues present by the Petitioners included: 'whether it was an abuse of discretion to abate Plaintiffs' state law claims filed in state court and to compel arbitration pursuant to the Federal Arbitration Act'; and 'Whether *Southland Corp. v. Keating* should be overruled'. (Appendix G).

On December 13, 2001, the Texas Supreme Court denied Petitioners' petition for writ of mandamus. (Appendix C).

Concisely, the basis of Petitioners' case to the United States Supreme Court is that the Federal Arbitration Act is not binding on state claims in state courts and that *Southland* should be overruled.

REASONS FOR GRANTING PETITION FOR WRIT OF CERTIORARI

Petitioners raise matters of general importance beyond their effect on these particular litigants. The matters raised include the application of the Federal Arbitration Act to state courts; the rights of states to establish their own discrimination policies and remedies; the rights of employees to seek redress for violations of state civil rights laws in state courts. Petitioners assert that the decisions involving these issues related to the application

of the Federal Arbitration Act in state court are errors of such national importance that it requires correction by this Court. Petitioners assert that the Federal Arbitration Act was never intended to apply to state law claims in state courts nor be binding on state courts.

In 1984, this Court decided *Southland Corp. v. Keating*. This was the first time that the United States Supreme Court held that the Federal Arbitration Act was applicable in state courts and pre-emptive of state laws hostile to arbitration. *Southland Corp. v. Keating*, 465 U.S. 1, 104 S.Ct. 852, 79 L.Ed.2d 1 (1984).

Petitioners would assert that:

1. the exercise of state authority in a field traditionally occupied by state-law should not be deemed pre-empted by a federal statute unless that was the clear and manifest purpose of Congress. This view was also expressed by Justice Stevens in *Southland* at 104 S.Ct. 862;

2. the Federal Arbitration Act is not binding on state courts; that it was "a procedural statute, applicable only in federal courts". This view was also expressed by Justice O'Connor in *Southland* at 104 S.Ct. 865;

3. the Federal Arbitration Act is not binding on state courts. This view was also expressed by Chief Justice Rehnquist in *Southland* at 104 S.Ct. 864;

4. the proper application of *stare decisis* does not prevent the correction of a mistake and that *Southland* misconstrued the Federal Arbitration Act. This view was expressed by Justice Scalia in *Allied Bruce Terminix Cos. v.*

Dobson, 513 U.S. 265, 130 L.Ed.2d 753, 115 S.Ct. 834 at 844-45;

5. the Federal Arbitration Act does not apply in state courts. This view was also expressed by Justice Thomas in *Allied Bruce*, 115 S.Ct. at 845.

CONCLUSION AND PRAYER

Plaintiffs submit that Congress never intended the Federal Arbitration Act to apply to nor be binding on state courts and that the Federal Arbitration Act cannot compel arbitration of state law causes of action, including the Petitioners' causes of action brought pursuant to the Texas Commission on Human Rights Act, in Texas state courts.

For these reasons, Relators/Plaintiffs ask that this Court grant this Petition for Writ of Certiorari and for any and all other relief to which they may be entitled.

Respectfully submitted,

ROBERT BRUNKENHOEFER

Date: March 1, 2002

APPENDIX A

[SEAL]

NUMBER 13-01-495-CV

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI

IN RE: ENEDELIA VAIZ and ESMERALDA VAIZ TREJO

On Petition for Writ of Mandamus

ORDER

(Filed Sep. 13, 2001)

Before Chief Justice Valdez and Justices Hinojosa and Castillo
Order Per Curiam

Relators, Enedelia Vaiz and Esmeralda Vaiz Trejo, filed a petition for writ of mandamus on July 27, 2001, requesting issuance of a writ directing the Respondent, the Honorable Robert J. Vargas, Presiding Judge of the County Court at Law Number One of Nueces County, Texas, to vacate his order of June 20, 2001, ordering that Relators' causes of action in Cause Number 01-61182-1 be abated and set for arbitration. This Court, having fully examined and fully considered said petition and response thereto, hereby DENIES Relators' petition for writ of mandamus.

PER CURIAM

Do not publish.
TEX. R. APP. P. 47.3

Order delivered and filed
this the 13th day of September, 2001.

APPENDIX B

CAUSE NO. 00-61086-1
01-61182-1

REBECCA PEREZ,	*	IN THE COUNTY COURT
SANDY MARTINEZ,	*	
ENEDELIA VAIZ, And	*	
ESMERALDA VAIZ	*	
TREJO	*	
Plaintiffs,	*	
	*	
VS.	*	AT LAW NUMBER ONE
SOUTHERN	*	
MULTIFOODS, INC.,	*	
TACO BELL, d/b/a	*	NUECES COUNTY,
Defendant	*	TEXAS
	*	

ORDER

On this day came on to be heard the Amended Motion to Abate filed by Defendant Southern Multifoods, Inc., d/b/a Taco Bell. The Court having reviewed the pleadings, heard the argument of counsel, and reviewed the evidence, finds that Defendant's Motion to Abate should be GRANTED. It is, therefore,

ORDERED, ADJUDGED, AND DECREED that the claims of Enedelia Vaiz and Esmeralda Vaiz Trejo be severed from this action.

IT IS ORDERED, ADJUDGED, AND DECREED that the causes of action of Plaintiffs Enedelia Vaiz and Esmeralda Vaiz Trejo are hereby abated and this matter be set for arbitration.

It is further ORDERED, ADJUDGED, AND DECREED that the causes of action of Plaintiffs Enedelia Vaiz and Esmeralda Vaiz Trejo be severed from this action and proceed under Cause Number 01-61182-1.

ENTERED this the 20 day of June, 2001.

/s/ Robert Vargas
JUDGE PRESIDING

Submitted By:

Chris McJunkin
Attorney for Plaintiffs
2842 Lawnview
Corpus Christi, Tx. 78404
Tel: (361) 882-5747
Fax: (361) 882-8926

APPENDIX C

[SEAL] **THE SUPREME COURT OF TEXAS**
Post Office Box 12248
Austin, Texas 78711 (512) 463-1312

December 13, 2001

Mr. Christopher Edwin McJunkin
2842 Lawnview
Corpus Christi, TX 78404

Mr. John A. Smith, III
Dunn & Weathered
611 South Upper Broadway
Corpus Christi, TX 78401

RE: Case Number 01-1079
Court of Appeals Number: 13-01-00495-CV
Trial Court Number: 01-61182-1
Style: IN RE ENEDELIA VAIZ AND ESMERALDA VAIZ TREJO

Dear Counsel:

Today the Supreme Court of Texas denied the petition for writ of mandamus in the above-referenced case.

Sincerely,

John T. Adams, Clerk

by /s/ Gena Pelham
Gena Pelham, Deputy Clerk

cc: Mr. Ernest M. Briones
Ms. Cathy Wilborn, Clerk
The Hon. Robert Vargas, Judge

APPENDIX D

EXHIBIT B

Southern Multifoods, Inc.
Alternative Dispute Resolution Program

This Alternative Dispute Resolution Program (the "ADR Program") is entered into by and between Southern Multifoods, Inc. whose address is 101 East Cherokee, Jacksonville, TX, in the county of Cherokee, and Esmeralda V. Trejo (name of employee). In this document, the terms ***we, us*** and ***our*** mean Southern Multifoods, Inc., and the terms ***you*** and ***your*** mean the above named employee. With respect to both parties, the terms shall also include the party's respective agents, attorneys, employees, officers, directors, principals, shareholders, direct or indirect parent, subsidiaries, affiliates, predecessors, successors, and assigns.

Introduction. Good employee relations is vital to our success as a team. If you have a complaint or problem with us, the matter can often be resolved informally and quickly by first contacting your Supervisor. If your supervisor is unable to resolve your concerns, then call our human resource department at (903) 586-1524. If those efforts are still not successful, we and you agree to resolve the dispute under this ADR Program, which we believe will provide both you and us with relatively convenient, expeditious, economical, and private procedures for mediation and arbitration of any disputes that might arise. Generally, mediation is an informally conducted procedure in which a neutral mediator helps the parties to reach a settlement of a dispute; and arbitration is an informally conducted adversary proceeding in

which the dispute is decided by a neutral arbitrator (though sometimes more than one arbitrator), who hears the evidence at a hearing and then issues a binding ruling. **Participation in this ADR Program is mandatory. The effect of this ADR Program is that both you and us, except as to small claims court matters, are waiving their right to a jury trial or a trial by a judge in court if either party requests arbitration. Discovery in arbitration is generally more limited than discovery in court proceedings. Also, either party's right to modify, vacate or appeal a ruling by the arbitrator(s) is strictly limited.** While participation in this program is mandatory, it does not alter the "At-Will" employment relationship. We may take any disciplinary action, including termination, without using arbitration. Arbitration is mandatory only when the dispute or grievance could be made the basis of a lawsuit in State or Federal Court.

Disputes. This ADR Program applies to any Dispute between you and us except as provided in this ADR program or prohibited by applicable law. A "Dispute" shall include any action, dispute, claim, or controversy of any kind (e.g., whether in contract or in tort, statutory or common law, legal or equitable) now existing or hereafter arising between you and us in any way arising out of or otherwise pertaining to or in connection with any of the following: This ADR Program; any agreements between you and us; claims for wages or other compensation due; tort claims; claims for discrimination (for example, race, sex, sexual orientation, religion, national origin, age, marital status, medical condition, handicap, or disability); any claim for benefits (except claims under an employee benefit or pension plan that either (1) includes in its

claims procedure an arbitration procedure different from this one, or (2) is underwritten by a commercial insurer which decides claims); claims for workers' compensation; post-termination claims such as defamation or retaliation; claims for violation of any federal, state, or other governmental law, statute, regulation, or ordinance; any incidents, omissions, acts, practices, or occurrences causing injury to you in which we might be wholly or partly responsible; or any aspect of the past, present, or future relationships of the parties.

Internal Mediation. If a Dispute arises and the Dispute cannot be settled through negotiation, the parties agree first to try in good faith to settle the Dispute by mediation under the rules of the American Arbitration Association ("AAA"), before resorting to arbitration, litigation, or some other dispute resolution procedure. Either party may initiate mediation by written request to the other. If within 10 days the parties have not agreed upon a neutral mediator from within the company, then the mediator shall be an employee from the Human Resources Department at Southern Multifoods, Inc. The parties agree to conduct the mediation within 45 days of the request for mediation or within such longer period to which the parties may agree in writing. The mediator may suggest ways of resolving the dispute but may not impose a settlement on the parties.

Binding Arbitration. Except as provided in this Agreement, upon either your demand or our demand, whether made before or after the filing of a lawsuit, any Dispute between you and us shall be resolved by binding arbitration in accordance with the terms of this ADR Program and the Commercial Arbitration Rules of the AAA, and

judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. We and you agree that by, engaging in activities with or involving each other as described above, they are participating in transactions involving interstate commerce. We and you intend that this ADR Program shall encompass and embody the broadest range of matters that may be arbitrated under the Federal Arbitration Act (Title 9 of the United States Code), excluding only such matters as to which applicable federal law precludes determination by binding arbitration or as to which Texas law precludes preemption by federal law. We and you further agree that should one of the parties invoke arbitration in accordance with this ADR Program, the other shall bring in the arbitration any claim or counterclaim that it may have against the invoking party, whether deemed to be compulsory or permissive in law; and the failure to bring such claim or counterclaim shall constitute a waiver of and a bar to the bringing of such claim or counterclaim in any subsequent arbitration or legal proceeding.

Small Claims Court. In the case of Disputes within the jurisdictional limits of small claims court, neither you or us shall be required to arbitrate upon the request of the other and the Dispute may be determined by the small claims court pursuant to and limited by its jurisdiction.

***Administrative* costs.** You will pay $200 of the arbitrator's fee, and we will pay all other fees associated with the mediation or arbitration proceedings. If, however, the arbitrator determines that you have exaggerated the monetary amount of you claim in bad faith, our obligation to bear the AAA filing fees in excess of $200 becomes null

and void and the parties instead shall each bear one-half of the actual fee.

***Location of* proceeding.** In the case of face-to-face proceedings, you and us will try to agree upon a location that is reasonably convenient to both parties with due consideration of their ability to travel and other pertinent circumstances. If you and us are unable to agree, the determination as to location may be made by the mediator or arbitrator(s) as the case may be.

Governing Rules. Each arbitration, including the selection of arbitrator(s), shall be administered by the AAA, in accordance with, and in the following order of priority: (1) the terms of this ADR Program-, (2) the Commercial Arbitration Rules of the AAA; and (3) the Federal Arbitration Act.

How to contact the AAA. The AAA offices in Texas may be contacted at 13455 Nole Road, Suite 1750, Dallas, Texas 75240, telephone (800) 426-8792 or 9214) 702-8222 or 1001 Fannin Street, Suite 1005, Houston, Texas 77002, telephone (713) 739-1302, subject to change. Requests for mediation or arbitration should be submitted to the other party and the AAA.

Number of arbitrators. For purposes of this ADR Program, the term "claim or amount in controversy" shall mean and include, without limitation, all amounts sought or awarded on all claims, counterclaims, and third-party claims for actual damages, statutory penalties, interest, arbitration fees, attorneys' fees, and all other costs. In matters in which relief other than a monetary sum is involved, the claim or amount in controversy shall be

determined by the fair market value of the subject property. With respect to a Dispute in which the claim or amount in controversy does not exceed $10,000 a single arbitrator shall be chosen and shall decide the Dispute. A single arbitrator shall have the power to render a maximum award of $10,000. With respect to a Dispute in which the claim or amount or controversy exceeds $10,000, the Dispute shall be decided by a majority vote of three arbitrators.

Authority of the arbitrator(s). The arbitrator(s), one or more as the case may be: (1) are requested, to the extent practicable, to conclude the arbitration proceeding within 180 days of the filing of the case with the AAA; (2) are requested to limit discovery to matters directly relevant to the Dispute; (3) may hear and rule on pre-hearing disputes and is authorized to hold pre-hearing conferences by telephone or in person; (4) may entertain a motion to dismiss and/or a motion for summary judgment by any party and shall apply the standards governing such motions under the Federal Rules of Civil Procedure; (5) may only grant relief that is based upon and consistent with prevailing legal precedent and authority; (6) may exercise any authority granted by state or federal law with respect to subpoenas in arbitration proceedings; (7) may determine any questions regarding the scope and enforceability of this ADR Program, including, without limitation, issues of arbitrability, fairness, capacity, waiver, unconscionability and so forth; (8) at the timely request of either you or us, are required to provide a brief written explanation of the basis for the award; (9) are required to make specific findings of fact and conclusions of law with respect to matters in which the claim or

amount in controversy exceeds $1,000; (10) may award attorneys' fees but only if otherwise recoverable under applicable law. All statutes of limitation applicable to any Dispute shall apply to any arbitration proceeding; and (11) the Arbitrator shall apply the substantive law (and the laws of remedies, if applicable) of the state of Texas, or federal law, or both, as applicable to the claim(s) asserted.

No Waiver; Preservation of Remedies; Multiple Parties. The filing and maintenance of a lawsuit or the use of one or more of these rights or remedies shall not constitute an election of remedies or a waiver by either you or us, nor render inapplicable the compulsory mediation and arbitration provisions of this ADR Program. We and you shall be entitled to the provisions of the Federal Arbitration Act.

Savings provision. Nothing in this ADR Program shall be deemed to constitute a waiver by you of any nonwaivable rights or remedies provided by applicable law or permit us to contract for, charge or receive any fee, charge or expense in excess of lawfully permitted amounts; rather this ADR Program is intended to establish procedures for the mediation and binding determination of Disputes through alternative dispute resolution procedures as set forth in this ADR Program. If any provision of this ADR Program is found to be unenforceable, the remaining provisions hereof shall be enforced to the maximum extent permitted by applicable law, and in lieu of any such unenforceable provision, there shall be substituted in its place a provision as similar in substance and effect as is capable of being enforced.

Other provisions. This ADR Program constitutes the entire agreement between you and us regarding dispute resolution and supersedes all prior discussions, arrangements, and other communications on dispute resolution. The provisions of this Program shall survive termination, amendment, or expiration of the documents between you and us and our relationship with each other, unless we and otherwise expressly agree in writing. This ADR Program may be amended, changed, or modified only by the express provisions of a writing which specifically refers to this ADR Program and which is signed by both you and us. We and you agree to keep all Disputes and arbitration proceedings strictly confidential, except for disclosures of information required in the ordinary course of the business of the parties or by applicable law or regulation. The captions or headings in this ADR Program are for convenience only and are not intended to constitute any part of the body or text of this ADR Program.

We and you understand and agree that, except as to small court matters, they are waiving their right to a jury trial or a trial by a judge in court if either party requests arbitration, that discovery in arbitration is generally more limited than discovery in court proceedings, and that either party's right to modify, vacate or appeal a ruling by the arbitrator(s) is strictly limited.

Executed this 3rd *day of* March, 1999.

I have read the foregoing and wish to participate in the above described ADR Program.

/s/ E V Trejo
Employee's signature

/s/ Larry K. Durrett
Larry K. Durrett,
President

Printed Name Esmeralda V. Trejo

Social Security Number 466-41-0593

APPENDIX E

CAUSE NO. 00-61086-1

REBECCA PEREZ,	*	IN THE COUNTY COURT
SANDY MARTINEZ,	*	
ENEDELIA VAIZ, And	*	
ESMERALDA VAIZ TREJO	*	
Plaintiffs	*	AT LAW NUMBER ONE
	*	
VS.	*	
	*	
SOUTHERN	*	
MULTIFOODS, INC.,	*	NUECES COUNTY, TEXAS
TACO BELL, d/b/a	*	
Defendant	*	

PLAINTIFF'S SUPPLEMENTAL RESPONSE TO DEFENDANT'S AMENDED MOTION TO ABATE

COMES NOW, Plaintiffs, Enedelia Vaiz and Esmeralda Vaiz Trejo, by and through their attorney, Chris McJunkin, and file this Supplemental Response to Defendant's Amended Motion to Abate and respectfully show the following:

I. OVERVIEW

1925: Congress passes the Federal Arbitration Act. *There are no civil rights laws.*

1964: Congress enacts Title VII laws related to addressing the nation's discrimination problems. Victims are given the right to file civil actions in courts of law.

1984: ***Southland Corp. v. Keating*, 465 U.S. 1, 79 L.Ed.2d 1270, 104 S.Ct. 852 (1984).** The first time that the

U.S. Supreme Court held that the FAA was applicable in state courts and pre-emptive of state laws hostile to arbitration.

1991: Congress enacts additional laws, 42 USCA Sec. 1981(a), to further its goal of remedying the nation's problems related to discrimination. Victims are given specific rights to have a jury decide certain issues.

* * *

Summarizing:

(a) 4 of the 5 Justices who made up the majority in Circuit City have written opinions stating that the basic premise of the FAA applying to state courts as set out in Southland is wrong.

(b) 4 Justices comprising the Dissent strongly state that the FAA's history is being overlooked reaching the decision.

(c) a total of 8 of 9 of the present Supreme Court Justices have shown that they would revisit the application of the FAA in state courts and in state employment contexts.

IV. ISSUES FOR REVIEW

Issue No. 1: *as set out in Allied Bruce: Whether Southland was wrongly decided by misconstruing the Federal Arbitration Act and request that it be overruled.*

1. Scalia: believes that Southland is wrong and that he will "stand ready to join four other Justices in overruling it, since Southland will not become more correct over time . . . "
2. O'Connor: believes that Southland' holding is wrong

3. Thomas: the FAA does not apply in state courts. Southland's holding is wrong.
4. Rehnquist: believes Southland's holding is wrong.

Issue No. 2: *Whether "such grounds as exist at law or in equity for the revocation" of FAA arbitration clauses in employment contracts in state courts.*

Issue No. 3: *Whether the application of the FAA to pre-empt state law in state courts is contrary to the purpose of the FAA and/or contrary to the rightful exercise of federal authority.*

Issue No. 4: *Whether the application of the FAA to remove employment disputes from state courts undermines the authority of states to implement their own substantive state policies related to discrimination, employee-employer relationships, contracts, and preventing persons with unequal footing from giving up certain rights without adequate protection/ safeguards.*

Issue No. 5: *Whether the FAA conflicts with Title VII, 42 USCA Sec 1981, and with Article III of the Texas Constitution.*

Issue No. 6: *Whether the national policy to prevent workplace discrimination, as set out in state and federal anti-discrimination laws, outweighs the national policy favoring arbitration when both are in conflict.*

Issue No. 7: *Whether the application of the FAA to employment discrimination is contrary to public policy and within the sec. 2 exception.*

Issue No. 8: *Due Process: Whether the Court's holding that that [sic] the rights and appeals available in state and*

federal anti-discrimination statutes are invalid in cases, state and federal, where there exist employment contracts containing the FAA clause deprives employees of Due Process as guaranteed in the Texas Constitution, U.S. Constitution, the Texas statutes and federal statutes.

Issue No. 9: *Whether the Federal Arbitration Act applies to suits in State Court.*

APPENDIX F

Excerpts from Relator's Petition for Writ of Mandamus to Thirteenth Court of Appeals (pages 1 & 7)

CAUSE NO 13-01-00495-CV

IN THE COURT OF APPEALS
FOR THE THIRTEENTH JUDICIAL DISTRICT
CORPUS CHRISTI, TEXAS

IN RE ENEDELIA VAIZ
And
IN RE ESMERALDA VAIZ TREJO
Relators

RELATORS' PETITION FOR WRIT OF MANDAMUS

From the County Court at Law Number Two
Nueces County, Texas

TO THE HONORABLE COURT OF APPEALS

COMES NOW, Relators/Plaintiffs, ENEDELIA VAIZ and ESMERALDA VAIZ TREJO, and pursuant to TRAP 52, submit this petition for writ of mandamus complaining of the order of the Honorable Judge Robert J. Varas, Presiding Judge of the County Court at Law Number Two of Nueces County, Texas. For clarity, Relators, Enedelia Vaiz and Esmeralda Vaiz Trejo are referred to as Plaintiffs; Respondent, the Honorable Judge Robert J. Vargas, is referred to as Honorable Judge Vargas; and the real party in interest, Southern Multifoods, Inc., is referred to as Defendant.

* * *

In ***Davidson***, this Court "concluded that Davidson gave no consideration for the purported arbitration

agreement", and that "the implied benefit of continued employment is illusory for an at-will employee." **Id at no. 15-16.**

In the present case: Plaintiffs were at-will employees, the implied benefit of continued employment was also illusory, there was no consideration given by the Defendant to support a valid contract and the Defendant was not bound to the same extent as the Plaintiffs by the ADR program – it could unilaterally take "any discipline action, including termination, without using arbitration".

Pursuant to ***Davidson,*** Defendant failed to meet its burden of proof that a binding arbitration agreement exists.

Issue No. 3: **Whether it was an abuse of discretion to compel arbitration pursuant to the Federal Arbitration Act and whether the FAA can compel arbitration of state law claims in a state court.**

Plaintiffs/Relators submit that the most important error lies in holding that the Federal Arbitration Act applies to claims brought pursuant to state statutes in state court.

History:

1925: Congress passes the Federal Arbitration Act. There are no civil rights laws.

1953: The Supreme Court held that a statute, the Securities Act, which invalidated arbitration agreements in certain contexts could be reconciled with the general

policy favoring enforcement arbitration agreements. *Wilko v. Swan,* 346

* * *

APPENDIX G

Excerpts from Relator's Petition for Writ of Mandamus to Texas Supreme Court (pages 1 & 9)

CAUSE NO 01-1079

IN THE SUPREME COURT
STATE OF TEXAS

IN RE ENEDELIA VAIZ
AND
IN RE ESMERALDA VAIZ TREJO
RELATORS

RELATORS' PETITION FOR WRIT OF MANDAMUS

Relators, ENEDELIA VAIZ and ESMERALDA VAIZ TREJO, submit this petition for writ of mandamus complaining of the order of the Honorable Judge Robert Vargas, Presiding Judge of County Court at Law Number One, Nueces County, Texas. For clarity, Relators are referred to as Plaintiffs; Respondent, the Honorable Judge Robert Vargas, is referred to as Honorable Judge Vargas; and the real party in interest, Southern Multifoods, Inc., is referred to as Defendant.

STATEMENT OF JURISDICTION

This Court has jurisdiction to issue a writ of mandamus under Texas Constitution Article 5, Section 6, and the Texas Government Code Sec. 22.002(a).

* * *

Issue No. 2: Whether *Southland Corp. Keating* should be overruled.

Application of the Federal Arbitration Act to State Law Claims

Plaintiffs assert that the Federal Arbitration Act can not be used to compel arbitration of state law claims in state courts and that *Southland Corp. v. Keating* is not a correct statement of the law as relates to the issues presented in this Petition for Writ of Mandamus and should be revisited. Authority and support for this position is found in the written opinions of current United States Supreme Court Justices.

The Federal Arbitration Act was passed by the United States Congress in 1925. At that time, there were no civil rights laws.

As relates to the enactment of the Federal Arbitration Act: Justice Stevens noted that the history of the FAA "makes clear that the FAA was a response to the refusal of courts to enforce commercial arbitration agreements, which were commonly used in the maritime context." *Circuit City, Inc. v. Adams*, 532 U.S. 105, 121 S.Ct. 1302, 1314, 149 L.Ed.2d 234, 253 (2001).

Hearings before the Senate heard testimony that the bill (the Federal Arbitration Act) was needed "to enable businessmen to settle their disputes expeditiously and economically, and will reduce the congestion in the Federal and State courts." *Circuit City*, 121 S.Ct. at 1315, n.2.

* * *